Thompson, 25 Or. 559, 37 Pac. 57. But it should not be valid against an innocent purchaser. *Taggart* v. *Warner*, 83 Wis. 1, 53 N. W. 33; *Taylor* v. *Millard*, 118 N. Y. 244, 23 N. E. 376.

RESTRAINT OF TRADE — SHERMAN ANTI-TRUST LAW — CORNERING THE MARKET. — The defendants were indicted for conspiring to corner the cotton market by the making of contracts for the purchase for future delivery of cotton greatly in excess of the available supply for the year, coupled with a temporary withholding from sale, with the purpose of securing control of the supply and enhancing the price. *Held*, that the indictment charges an offense under the Sherman Anti-Trust Law. *United States* v. *Patten*, 226 U. S. 525, 33 Sup. Ct. 141.

The acquisition of a dominant portion of the cotton supply available for the year, by a combination resulting in an elimination to a large degree of any possible competition in meeting the demand for that supply, presents a situation dangerous to the public interest, particularly when such demand is artificially stimulated; and accordingly it constitutes an undue restraint within the rule laid down by the Supreme Court. See 26 HARV. L. REV. 379.

SPECIFIC PERFORMANCE — DEFENSES — RIGHT OF JOINT VENDEE TO CONVEYANCE TO HIMSELF ALONE. — The defendant promised under seal to convey land to the plaintiff and the co-defendant if the purchase price was paid before a certain time. The co-defendant refused to go on, and procured from the defendant another option to purchase the same property. The plaintiff tendered the purchase price within the specified time and brought suit for specific performance, asking a conveyance to himself alone. *Held*, that the decree should be granted. *Shaeffer* v. *Herman*, 85 Atl. 94 (Pa.).

The court considered that the tender of the purchase price completed the contract. Ordinarily joint obligees on a contract must join in a suit for specific performance. *Davis* v. *Pfeiffer*, 213 Ill. 249, 72 N. E. 718. But where one wrongfully refuses to join as plaintiff he may be joined as defendant. *Cook* v. *Haaly*, 1 Cooke (Tenn.) 465. Ordinarily, however, the conveyance decreed should be the one promised. *Davis* v. *Pfeiffer*, *supra*; *Sproule* v. *Winant's Heirs*, 23 Ky. 195. When two jointly contract to buy land, each thereby becomes equitable owner of a one-half interest, and by paying more than a proportionate share of the purchase price one of the joint purchasers does not thereby become the owner in proportion to the overpayment. See *Freeman* v. *McMillian*, 2 Lea (Tenn.) 121, 123. And it has been held that one who pays the entire price has no equitable claim on the other's share. *Crane* v. *Caldwell*, 14 Ill. 468. See *Glasscock* v. *Glasscock*, 17 Tex. 480, 486. Another view, however, recognizes an equitable lien. *Tompkins* v. *Mitchell*, 2 Rand (Va.) 428. It has been suggested that even where, as in the principal case, the conveyance has not yet been made, the entire equitable interest should rest in one who has paid the money, subject to a right of redemption by the joint obligee. *Deitzler* v. *Mishler*, 37 Pa. 82. On this view, since the co-defendant disclaimed all rights under the contract and refused to pay his share of the purchase price, it would seem proper for the court to convey the entire property to the plaintiff, thereby strictly foreclosing the co-defendant of his interest.

SURETYSHIP — SURETY'S DEFENSES: VARIATION OF RISK — SURETY'S LIABILITY ON APPEAL BOND WHERE JUDGMENT AFFIRMED BY CONSENT. — Upon appeal from a judgment, a bond was given conditioned upon the appellant's payment of all judgments which might be rendered against him. The judgment appealed from was affirmed by consent of the parties. *Held*, that the surety is not released from the bond. *First State Bank of Mountain Lake* v. *C. E. Stevens Land Co.*, 137 N. W. 1101 (Minn.).

Any agreement canceling the principal obligation cancels the surety's obligation. *Whitcher* v. *Hall*, 5 B. & C. 269. Though the principal obligation is preserved, an agreement between creditor and principal increasing the surety's potential risk releases him. *Holme* v. *Brunskill*, 3 Q. B. D. 495. Appeal bonds are conditional upon reversal or payment. It has been held that an affirmance by consent increases the risk by destroying the surety's chance for reversal and therefore releases him. *Johnson* v. *Flint*, 34 Ala. 673. But some courts argue that the surety is nevertheless bound because the principal in agreeing to affirmance acts within his authority. *Bailey* v. *Rosenthal*, 56 Mo. 385; *Howell* v. *Alma Milling Co.*, 36 Neb. 80; *Drake* v. *Smythe*, 44 Ia. 410; *Thomas Motor Branch Co.* v. *United States Fidelity & Guaranty Co.*, 153 N. Y. App. Div. 32. Moreover, the principal could have defaulted on appeal without releasing the surety. *Cf. Share* v. *Hunt*, 9 Serg. & R. (Pa.) 404. And an affirmance by consent has been considered equivalent in substance to default. *Ammons* v. *Whitehead*, 31 Miss. 99. These arguments forget that it is the creditor's conduct and not the principal's, in agreeing to the affirmance, that is to be considered, since the equitable defense of variation of risk rests upon the creditor's duty to the surety. But contrary decisions releasing the surety overlook the difference between the two conditions of the bond. The creditor owes the surety an equitable duty not to interfere with payment. *Leonard* v. *Village of Gibson*, 6 Ill. App. 503; *Ross* v. *Ferris*, 18 Hun (N. Y.) 210. But he owes no such duty as to reversal. His avowed purpose is, indeed, to prevent reversal, and securing an affirmance by any lawful means should not release the surety. *Chase* v. *Beraud*, 29 Cal. 138. Some courts, however, hold that an affirmance by consent is never within the contemplation of the bond. *Large* v. *Steer*, 121 Pa. St. 30, 15 Atl. 490. *Cf. Baker* v. *Frellsen*, 32 La. Ann. 822; *Foo Long* v. *American Surety Co.*, 146 N. Y. 251, 40 N. E. 730.

TRADE MARKS AND TRADE NAMES — EQUITABLE PROTECTION OF A TRADE NAME WHERE NO ACTUAL COMPETITION. — The plaintiffs had developed a nation-wide business in milk products, such as condensed milk, malted milk, and cream, under the trade name "Borden." A manufacturer of ice cream organized the defendant company with a nominal incorporator by the name of Borden, presumably for the sole purpose of enabling the ice cream to be sold under the name "Borden." The plaintiffs, who had hitherto sold an ice cream only for use in hospitals, brought a bill in equity to enjoin the deceptive use of the trade name, alleging that they were about to put a commercial ice cream on the market. *Held*, that no injunction should be granted. *Borden's Condensed Milk Co.* v. *Borden's Ice Cream Co.*, 45 Chic. Leg. N. 121 (C. C. A., Seventh Circ.). See NOTES, p. 442.

BOOK REVIEWS.

THE DISTINCTIONS AND ANOMALIES ARISING OUT OF THE EQUITABLE DOCTRINE OF THE LEGAL ESTATE. By R. M. P. Willoughby. Cambridge, England: The University Press. 1912. pp. xx, 118.

Too much should not be expected of a doctor's dissertation, which as such may be highly creditable to its author and yet not all that might be desired as a discussion of the subject chosen. Thus, the present example is excellently written, contains many acute and valuable observations, such for instance as the suggestion that in modern judicial applications of the doctrine of tacking we may "detect a note rather of triumph than of surrender — the triumph of art, not the surrender of justice to the binding force of unfortunate precedent"